



AGENSYS C/O MORRISON & FOERSTER LLP  
12531 HIGH BLUFF DRIVE  
SUITE 100  
SAN DIEGO CA 92130-2040

**MAILED**

**SEP 10 2010**

**OFFICE OF PETITIONS**

In re Patent No. 7,510,855	: DECISION ON REQUEST
Issued: March 31, 2009	: FOR RECONSIDERATION
Application No. 09/771,312	: OF PATENT TERM ADJUSTMENT
Filed: January 26, 2001	: AND
Attorney Docket No: 511582000100	: NOTICE OF INTENT TO ISSUE
	: CERTIFICATE OF CORRECTION

This is a decision on the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705 filed on May 29, 2009, requesting that the patent term adjustment indicated on the above-identified patent be corrected from 801 days to 1312 days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand four hundred fifty-eight (1458) days is **GRANTED to the extent indicated herein**.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on January 26, 2004 and ends on November 2, 2006, the day before the RCE was filed, and the B delay considering the 142 days of overlap is 1011 days. See 35 U.S.C. 154(b)(1)(B)(i). Non-overlapping B delay is 869 days.

Additionally, Applicant argues that a corrected Appeal Brief in response to a March 18, 2008 Notification of Non-Compliant Appeal Brief was filed 103 days later on June 18, 2008 and thus that 103 days applicant delay should have been entered in accordance with 35 USC 154(b)(2)(C)(ii) and 37 CFR 1.704(b)<sup>1</sup>.

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<sup>1</sup>37 CFR 1.704(b) provides that:

With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

Applicant is advised that the filing of an appeal brief is not a reply within the meaning of the rule and as such, the correction of an appeal brief is not a failure to engage.

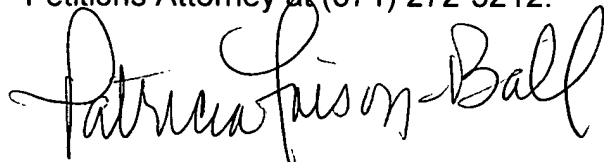
As such, the patent term adjustment is 1458 (883 "A delay" days, plus 869 "B delay" days, minus 294 applicant delay days) not 1312.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand four hundred fifty-eight (1458) days**.

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style with a large initial "P".

Patricia Faison-Ball  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

**DRAFT**  
**UNITED STATES PATENT AND TRADEMARK OFFICE**  
**CERTIFICATE OF CORRECTION**

**PATENT** : 7,510,855 B2

**DATED** : March 31, 2009

**INVENTOR(S)** : Aya Jakobovits

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (801) days

Delete the phrase “by 801 days” and insert – by 1458 days--